

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division**

DISTRICT OF COLUMBIA
Department of Insurance, Securities
and Banking,

Petitioner,

v.

D.C. CHARTERED HEALTH PLAN, INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2
Judge: Melvin R. Wright
Calendar No.: 15
Next Scheduled Event: Status Hearing
July 17, 2013, at 9:30 a.m.

PRAECIPE

**NOTICE OF FILING SPECIAL DEPUTY TO THE REHABILITATOR'S FIFTH
STATUS REPORT AND PETITION FOR ORDER APPROVING (1) SETTLEMENT
WITH CARDINAL BANK AND (2) PROCESS FOR REVIEWING AND PAYING
REHABILITATION FEES AND EXPENSES**

William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking, as Rehabilitator of D.C. Chartered Health Plan, Inc., by and through his attorneys, files the attached Special Deputy to the Rehabilitator's Fifth Status Report and Petition for Order Approving (1) Settlement with Cardinal Bank and (2) Process for Reviewing and Paying Rehabilitation Fees and Expenses. The Fifth Status Report includes a request for an Order that:

- (i) authorizes the Rehabilitator to enter into the Settlement Agreement with Cardinal Bank; and
- (ii) approves the Rehabilitator's recommended process for reviewing and paying professional fees and expenses incurred in the rehabilitation of D.C. Chartered Health Plan, Inc. (in Rehabilitation).

Date: July 9, 2013

Respectfully submitted,

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Special Deputy to the Rehabilitator

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2013, a copy of the foregoing was filed and served by email upon:

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**SPECIAL DEPUTY TO THE REHABILITATOR'S FIFTH STATUS REPORT AND
PETITION FOR ORDER APPROVING (1) SETTLEMENT WITH CARDINAL BANK
AND (2) PROCESS FOR REVIEWING AND PAYING REHABILITATION FEES AND
EXPENSES**

Daniel L. Watkins, as Special Deputy to the Rehabilitator of D.C. Chartered Health Plan, Inc. in Rehabilitation (Chartered), files this *Fifth Status Report*, including a request for an order approving (1) the settlement with Cardinal Bank and (2) the proposed plan for the Court's review of Rehabilitation fees and expenses.

1. **Update From Fourth Status Report.** On May 17, 2013, the Special Deputy filed his Fourth Status Report with the Court. The following information provides an update to the Fourth Status Report.

(a) **12/31/12 Audited Financial Statements and 3/31/13 Financial Statements.**

- i. On May 29, 2013, Brown Smith Wallace LLC (BSW) issued its Independent Auditor Report on Chartered's 2012 statutory financial statements. See Exhibit 1. The audit found no uncorrected or material misstatements in Chartered's financials previously filed with the Department of Insurance, Securities and Banking (DISB) and the Court in the Second Status Report. BSW's qualified opinion notes risks related to among other things (1) Chartered's claimed \$32 million retrospective premium asset, (2) the

pledged assets seized by Cardinal Bank subsequent to the audit, (3) the consolidated tax returns not filed since April 2010 and (4) doubt about Chartered's ability to continue as a going concern. The statutory financials do not include any adjustments that might result from these risks.

- ii. On June 14, 2013, Chartered filed unaudited financial statements with DISB for the first quarter of 2013 reflecting a loss for the period of \$6,492,007. See Exhibit 2. The statement also reflects that Chartered's collateral supporting D.C. Healthcare System, Inc.'s (DCHSI) outstanding line of credit was seized by Cardinal Bank when it called DCHSI's loan in May, as described more fully in paragraph 1(d) below. The combination of operating losses and collateral claimed by Cardinal Bank to repay DCHSI's loan pushed Chartered's capital and surplus at March 31, 2013 to negative \$28.2 million. Once completed, Chartered will file audited financial statements with DISB and the Court reflecting Chartered's 2013 contract period, January 1, 2013 through April 30, 2013.

(b) Pending Legal Matters.

- i. On May 9, 2013, the Court denied MedStar's motion to intervene in the rehabilitation proceedings. On May 31, 2013, MedStar filed a notice of appeal of that decision. The parties continue to arbitrate the disputed matters.
- ii. On June 10, 2013, DCHSI filed in the District of Columbia Court of Appeals its Opening Brief in its appeal of the Court's approval of the AmeriHealth transaction and the Plan of Reorganization.
- iii. On July 2, 2013, the District of Columbia Court of Appeals *sua sponte* consolidated the MedStar Appeal and the DCHSI Appeals. The consolidation order states, among other things, that the Rehabilitator's consolidated opposition briefs shall be filed within 30 days from the filing of MedStar's opening

brief. The Court has not yet issued a deadline for MedStar to file its opening brief.

(c) **Premium Claims.** The Rehabilitator and the Department of Health Care Finance (DHCF) have reached an agreement in principle settling Chartered's claims for retrospective premium owed under its previous Medicaid contract. The parties currently are working out the details of the settlement and the Rehabilitator has informed DHCF that any final settlement must be conditioned on the Court's approval, in accordance with the Emergency Consent Order of Rehabilitation. The Rehabilitator will present definitive settlement document(s) to the Court for review and will request the Court's approval. The Rehabilitator also will present a recommendation to the Court for making payments to providers in accordance with the Plan of Reorganization.

(d) **Parent Company and Related Party Issues.**

- i. On April 26, 2013, Cardinal Bank claimed a default under, and accelerated the maturity of, the Line of Credit Promissory Note in the amount of \$12 million, issued by DCHSI in favor of Cardinal Bank (Note). Cardinal Bank has applied collateral pledged by Chartered supporting the Note to pay amounts owed by DCHSI under the Note. Cardinal Bank has returned \$1,657,000 in excess collateral to Chartered. The Rehabilitator and Cardinal Bank desire to resolve outstanding matters regarding the Note according to the terms of the Settlement Agreement and Mutual Release attached as **Exhibit 3** (Settlement Agreement). The Rehabilitator requests the Court's leave to enter into the Settlement Agreement.
- ii. On May 30, 2013, Chartered filed in the Superior Court for the District of Columbia a Complaint against DCHSI and its shareholder, Jeffrey E. Thompson, seeking recovery of amounts determined to be due Chartered, including contractual indemnification from Thompson for the collateral seized by Cardinal Bank in

satisfaction of DCHSI's Note. DCHSI's and Thompson's response to the Complaint is currently due July 16, 2013.

2. **Carrying Out the Plan of Reorganization and Payment of Chartered's Liabilities**

- (a) In May, the Rehabilitator sent a notice to medical providers regarding his request to the Court for a claims bar date of August 31, 2013, and providing additional information regarding the claims submission and appeal processes. The notice, sent via certified mail, accompanied a report to each provider regarding that provider's processed but not paid claims as of May 10, 2013. On June 5, 2013, after the Court's Order approving the bar date was entered, notice of the claim bar date was faxed to providers. See Exhibit 4. Another notice was enclosed in a certified mailing recently sent to providers with updated reports on processed but unpaid claims through June 27, 2013. On July 2, 2013, notice of the bar date and proof of claim in the forms attached as **Exhibit 5** were sent to all known non-medical provider creditors of Chartered. A notice in the form attached as **Exhibit 6** is scheduled to be published twice in July in local newspapers.
- (b) The Rehabilitator has marshaled assets totaling \$10,043,350 since April 30, 2013, including the asset purchase payment from AmeriHealth, birth and enrollment adjustment payments from DHCF and the excess collateral returned by Cardinal Bank. As mentioned in paragraph 1(c) above, as additional assets are marshaled, the Rehabilitator will present to the Court a recommendation for making Class 3 payments in accordance with the Plan of Reorganization. Also as required by the Plan of Reorganization, the Rehabilitator will consider payment of claims below Class 3 only if all Class 3 claims are paid in full.
- (c) Through June 27, 2013, provider claims totaling approximately \$48 million have been processed but not paid. Additional incurred but not yet processed or reported claims will be added to the total as those claims are processed. Estimated provider claims do not include

most of MedStar's disputed claim for over \$30 million. **Exhibit 7** provides more detail about outstanding provider claims.

3. **Rehabilitation Expenses.**

(a) As requested at the May 30, 2013 status conference, the Rehabilitator has submitted to the Court for *in camera* review fee and expense statements for services rendered by the Special Deputy to the Rehabilitator and various counsel and other consultants between October 19, 2012 and April 30, 2013. The Rehabilitator has approved and paid these fees as Class 1 administrative expenses pursuant to the Court approved Plan of Reorganization.

Going forward, statements approved by the Rehabilitator for the fees and expenses of the Special Deputy, counsel and other consultants will be submitted to the Court for *in camera* review on a monthly basis. No payments have been made to the Special Deputy, various counsel or other consultants since the May 30 status conference. Statements for fees and expenses approved by the Rehabilitator for payment since the Status Conference on May 30, 2013, are being submitted to the Court today for review. For ease of administration, the Rehabilitator respectfully requests that he be authorized to pay such fees and expenses each month pending the Court's review, with the understanding that the Rehabilitator will promptly seek reimbursement from the Special Deputy, counsel and/or consultants of any amounts that the Court may determine to be unnecessary or unreasonable.

(b) The Rehabilitator desires to provide a full and open accounting of all financial matters related to Chartered's operations, including aggregate Class 1 administrative fees and expenses incurred for professional fees for the rehabilitation of Chartered. Since the filing of the Fourth Status Report on May 21, 2013, the Rehabilitator has reviewed and approved the payment of professional fees and expenses totaling \$773,312.06, as set forth more specifically in **Exhibit 8**. These fees and expenses would be paid as Class 1 administrative

expenses pursuant to the Court approved Plan of Reorganization upon the Court's entry of an Order approving the review and payment process.

RELIEF REQUESTED

WHEREFORE, the Rehabilitator by his Special Deputy petitions the Court to enter the requested Order that: (i) authorizes the Rehabilitator to enter into the Settlement Agreement with Cardinal Bank and (ii) approves the Rehabilitator's recommended process for reviewing and paying professional fees and expenses incurred in the rehabilitation of Chartered.

Respectfully submitted,

/s/ Daniel L. Watkins
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**ORDER APPROVING (1) SETTLEMENT WITH CARDINAL BANK AND
(2) PROCESS FOR REVIEWING AND PAYING
REHABILITATION FEES AND EXPENSES**

On July 9, 2013, Daniel L. Watkins, as Special Deputy to the Rehabilitator of D.C. Chartered Health Plan, Inc. in Rehabilitation (Chartered), filed a *Fifth Status Report and Petition for Order Approving Settlement and Plan for Rehabilitation Fee and Expense Filing*. The Petition asked the Court to enter an order that: (i) authorizes the Rehabilitator to enter into the Settlement Agreement with Cardinal Bank; and (ii) approves the Rehabilitator's recommended process for reviewing and paying professional fees and expenses incurred in the rehabilitation of Chartered.

Upon consideration of the Petition and the entire record herein, it is this ____ day of July, 2013,

1. ORDERED: That the Rehabilitator is authorized to enter into the Settlement Agreement with Cardinal Bank;
2. FURTHER ORDERED: That the Rehabilitator's recommended process for reviewing and paying professional fees and expenses incurred in the rehabilitation of Chartered is approved; and

3. This is entered as a final Order.

Melvin R. Wright
Judge, D.C. Superior Court

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